IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Crl.Appeal No.532 SB of 1996

Dateof Decision:18thDecember, 2007

Jarnail Singh

…Appellant

Versus

State of Punjab

…Respondent

CORAM: HON'BLE MR.JUSTICE HARBANS LAL

Present: Mr.T.S. Sangha, Advocate
for the appellant.

Mr.Antar Singh Brar, Deputy Advocate General, Punjab

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HARBANS LAL, J.

This appeal has been directed against the judgment/order dated 9th July, 1996 rendered by the Court of learned Additional Sessions Judge, Patiala whereby he convicted and sentenced the accused-appellant to undergo rigorous imprisonment for a period of 8 years under Section 304(II) of the Indian Penal Code.

Shortly put, the facts of the prosecution case are that Ramtar deceased was the younger brother of Harjinder Kumar son of Jiwa Nath PW7 complainant. The deceased was employed as a driver on a Maruti Van bearing registration No.PB-01-0353 belonging to Gurdev Singh, resident of Village Sular. On 15th November, 1993, Harjinder Kumar PW7 was

proceeding from village Tarain to village Phagan Majra to meet Mohinder Singh son of Kartar Singh and at about 6.30 PM, he reached the bus stop of village Phagan Majra, where he met Manjit Singh, Sarpanch and Chanan Singh Member Panchayat of village Kasiana. They all three started to village Phagan Majra. When they reached the point from where a kachha path forks off to village Kasiana, they found the abovementioned Maruti van with its headlight on lying parked with its windows open at a distance of about 1½ killa from the mettaled road. On suspicion, they went towards the van and on reaching there, they found Ramtar and the accused Jarnail Singh seated on the rear seat of the van. Ramtar was sitting on the right side, whereas the accused was found seated on his left side. Jarnail Singh accused was putting pressure on Ramtar to take the van by kachha path way to village Kasiana but Ramtar was disinclined. An exchange of hot words **ensued**. Jarnail Singh accused dealt two stab blows with knife on the chest and other on right flank of Ramtar. He rolled down on the ground through the right window of the Van. On sensing that Ramtar has succumbed to the injuries, Jarnail Singh plunged the knife into his chest, in order to commit suicide. The knife fell down from his grip in the Van. After having arranged a tractor Ramtar and Jarnail Singh were brought to Rajindra Hospital, Patiala. The Van was left at the spot. On reaching the hospital, PW Harjinder Kumar and others were told by doctor that Ramtar has expired. Harjinder Kumar and Manjit Singh left for the Police Station Sadar Patiala. When they reached near the General Bus Stand, Patiala they came across ASI Karnail Singh alongwith other police officials at about 10.30 PM.

Harjinder Kumar PW made statement Ex.PD before this ASI who made his endorsement Ex.PD/1and sent the same to the police station where on its basis formal FIR Ex.PD/2 was recorded. ASI Karnail Singh alongwith Harjinder Kumar, Manjit Singh and other police officials went to Rajindra Hospital, Patiala. At that time the dead house was lying locked. Early in the morning at about 6.30 A.M. Raj Kumar attendant came to the dead house and opened the same.

The dead body of Ramtar was identified by Harjinder Kumar and Manjit Singh PWs. The aforesaid ASI prepared the inquest report Ex.PA/1 and handed over the dead body alongwith request Ex.PA/2 to Constable Gurdeep Singh for postmortem examination of the same. Karnail Singh ASI in the company of Harjinder Singh, Manjit Singh and other police officials went to the scene of crime, which he inspected and prepared the rough site plan Ex.PW11/A showing the place of occurrence. He seized one knife Ex.P.1, which was allegedly stained with blood. The same was converted into a parcel after preparing its rough sketch Ex.PW11/B. The knife was taken into possession vide memo Ex.PW10/A. Some portion of the rear seat of the Van which was blood stained alongwith its foam was also removed and turned into a parcel with seal 'GS' and taken into possession vide memo Ex.PW10/E. The Van alongwith its Registration Certificate Ex.PW10/D was also seized vide memo Ex.PW10/C. Thereafter, ASI Karnail Singh came to Rajindra Hospital, Patiala and took into possession the parcel containing clothes of the deceased. He deputed some constables including Amar Singh to guard the accused Jarnail Singh in the

hospital. He went back to the police station on 16th November, 1993 and deposited the case property with seals intact with MHC Bhupinder Singh. He arrested the accused on 9th December, 1993. After completion of investigation, the charge-sheet was laid in the Court of learned Chief Judicial Magistrate, Patiala, who vide his order dated 15.3.1994 committed this case to the Court of learned Sessions Judge, Patiala for trial of the accused.

The accused was charged under Section 302 of the Indian Penal Code as well as 309 of IPC. It is worth pointing out here that vide his order dated 3rd September, 1994 recorded in the order-sheet, the learned Additional Sessions Judge, deleted the charge under Section 309 of IPC with the observations that the Hon'ble Apex Court has held in re: **P.Rathinam Nagbhusan Patnaik vs. Union of India,** 1994(2) Recent Criminal Reports 564 that Section 309 of IPC is unconstitutional.

In order to substantiate its allegations, the prosecution has examined PWs Dr.O.P.Aggarwal, Dr.Sukhcharan Singh, Constable Bachna Ram, Manjit Singh, Harjinder Singh, Balbir Singh, Rajinder Singh, Draftsman, Harbhajan Singh, Karnail Singh, MHC Bhupinder Singh and closed its evidence by tendering the chemical examiner report Ex.PX and Serologist's report Ex.PY and also by giving up Gurdeep Singh Constable as unnecessary. On close of the prosecution evidence, when examined under Section 313 Cr.P.C. the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded innocence. He put forth that " I was learning driving from Ramtar deceased, who was

my friend. On the day of the occurrence three unidentified persons hired the Van of Ramtar and on reaching the spot, Ramtar refused to take his Van on the kachha path and those persons picked up a row with him and they assaulted both Ramtar and the accused with their Gatra Kirpan and both Ramtar and myself were given injuries. I became unconscious on receipt of injury in my stomach and subsequently I was involved in this case". Without adducing any evidence, he closed his defence.

After hearing the learned Additional Public Prosecutor for the State, the learned defence counsel and examining the prosecution evidence, the learned trial Court convicted and sentenced the accused/appellant as noticed here-in-before.

I have heard Mr.T.S.Sangha, Advocate appearing on behalf of the appellant as well as Mr.Antar Singh Brar, Deputy Advocate General, Punjab and have gone through the record with due care and circumspection.

Mr.T.S.Sangha, Advocate appearing on behalf of the appellant valiantly urged that the occurrence took place at 7.00 PM and F.I.R. was allegedly recorded at 10.30 PM. He further puts that the special report reached the Magistrate in the same town on the next day at 10.00 AM. Had F.I.R. come into existence at 10.30 P.M. or 11.00 P.M., it would have reached the house of the Magistrate at 12.00 P.M. The inquest was drawn at 7.00 A.M. and that in place of FIR number, a dash is shown and FIR number was later on inserted. The statements of witnesses in inquest proceedings do not indicate any FIR number and the space is left blank. Thus, there is enough material to hold that the FIR came into existence on

16th November, 1993 at 9 A.M.

The next argument having been raised by Mr.Sangha is that as per the prosecution story Manjit Singh Sarpanch, one Chanan Singh and Harjinder Kumar had witnessed the occurrence. Though, Manjit Singh Sarpanch who appeared as PW6 has deposed that one Pal Singh found two injured persons in a Van near his fields and he informed me (Manjit Singh Sarpanch) and that he went to the spot and found one person to be dead and other injured. He further pressed into service that he alongwith Chanan Singh went to the Police Station and reported the matter and the police removed both of them to the hospital and from the driving licence of Ramtar deceased, the police came to know about his identity as well as the village to which he belonged. This witness obviously rules out the presence of Harjinder Kumar at the time of occurrence.

Mr.Sangha, further canvassed at the bar that it is very difficult to believe the presence of Harjinder Kumar at the spot for the reason that as alleged by him, it was by chance that he happened to pass that way and he spotted a Van from distance and had a hunch that the Van was of his brother and he went there and occurrence took place in his presence, which is too providential to be true.

Argued further, Mr.Sangha, the evidence of a solitary witness can be relied upon if his presence at the place of occurrence is natural and his testimony is free from any blemish whereas in the present case both these requirements are not fulfilled. He further pointed out that in the FIR Harjinder Kumar PW says that following altercation between the deceased

and the accused, the deceased first gave a knife blow to the accused and then the accused gave him two knife blows and this was his version at 10.30 PM when FIR was allegedly recorded. When inquest proceedings took place on the next day at 7.00 AM, he struck to the same version, though, in the Court, he says that the accused first gave two knife blows to the deceased and then tried to commit suicide by giving a knife blow to himself. The learned trial Court has gravely erred in holding that this contradiction is of no consequence. Mr.Sangha had been emphatic in the course of argument that a clear cut case of right of private defence is made out for the reason that the deceased was the aggressor as firstly, he gave a blow to the accused and in reprisal the latter gave two blows to the deceased and the theory of trying to commit suicide is bizarre and furthermore, there is no charge under Section 309 of IPC.

Assailing the prosecution evidence, Mr.Sangha further maintained with a good deal of force that the prosecution is also guilty of introducing another false witness Balbir Singh, who says that he is a Taxi driver and that Jarnail Singh came and hired Taxi of Ramtar in his presence and Ramtar never returned. This witness did not produce any Registration Certificate in proof of the fact that he was owning a taxi. To gloss over it, he states that he has sold the taxi. He has regretted his inability to recollect from where he had purchased his taxi or to whom he sold it and he has admitted that he was holding a forged driving licence. These circumstances cumulatively go to show that he was neither holding any taxi nor Jarnail Singh accused came to hire taxi in his presence nor the accused hired taxi of

Ramtar and to crown it at all, his evidence in its entirety is liable to be brushed aside.

To overcome these submissions, Mr.Antar Singh Brar, Deputy Advocate General, Punjab submitted that the presence of Harjinder Kumar PW alongwith others at the time of occurrence is probablised as he had gone to meet Sher Singh, the father-in-law of Mohinder Singh a resident of his village and when he alongwith Manjit Singh Sarpanch as well as Chanan Singh Panch reached katcha rasta, they saw the occurrence in the Maruti Van.

Dr.O.P.Aggarwal, PW1 has stated as under:-

> *"I am M.D.Forensic Medicine and I am a Medico Legal expert and I am conducting post mortem examination from the last about 17 yeas as Medical Officer, then as Registrar, then lecturer, then senior lecturer and now as Assistant Profession and have conducted about 2000 post mortem examinations.*
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> *On 16.11.1993 at 11.00 a.m. I have conducted post mortem examination on the dead body of Ram Tar son of Jiwa Nath, aged 21 years, resident of Treny. The body was brought by Karnail Singh ASI. The body was identified by Harjinder Kumar, Manjit Singh Sarpanch.*
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> *The dead body of male wearing Pant, shirt Swater, Banian, Kacha, Socks, Rigor mortis was present on all over the body. Post Mortem staining were present on the*

back. I noted the following injuries:-

Injuries

1. *There was stab wound 4 cm x 2 cm on the right side of chest. 4 cm below the right nipple. On dissection the wound enters into chest cavity then goes to the left side of chest cavity. Right lung, left lung and heart was having out. Chest cavity was having blood.*
2. *Stab wound ½ cm x ½ cm on the right side of chest was present. 4 cm away from injury no.1 and it was skin deep.*

There was no smell of alcohol either from the mouth or from the stomach. The cause of death in my opinion was hemorrhage, shock resulting from above injuries. Injury no.1 was sufficient to cause death in the ordinary course of nature. Both the injuries were ante-mortem in nature and both the injuries were caused with sharp edged weapon. The time between injury and death was immediate and between death and post mortem was within 12 to 24 hours. The dead body, post mortem report and police papers and clothes were handed over to the police after doing post mortem. The true copy of the post mortem report is Ex.P.A. It bears my signatures and is correct. At the time of post mortem examination I have received the police papers including

inquest report Ex.P.A/1. Request for post mortem examination is Ex.P.A./2 and it bears my endorsement Ex.P.A./3 vide which I made observations that the deceased Ram Tar was not exhibiting any smell of alcohol. This endorsement is in my hand and bears my signatures. All the police papers consisting of 22 pages bears my initials.(At this stage a sealed parcel alleged to contain knife has been produced, the seals are intact. The seals have been broken and the parcel has been opened and the knife has been taken out.) Injury No.1 and 2 on the person of Ram Tar could be caused with knife Ex.P.1 shown to me in the Court. (At this stage another parcel alleged to contain the clothes of the deceased has been produced. The seals are intact and the parcel has been opened and the clothes of the deceased have been taken out.) The clothes of the deceased consisting of one Pant Ex.P.2, Shirt Ex.P.3, Swatter Ex.P.4, Banyan Ex.P5, underwear Ex.P.6, pair of socks Ex.P.7/1-2 are the same which were taken out from the body of the deceased at the time of post mortem examination. There are corresponding cuts on the shirt, banyan and sweater Ex.P.3, ex.P.4, ex.P.5, All the clothes bears my initials."

Dr.Sukhcharan Singh PW2 has stated in the following terms:-

"I am MBBS.D. Orthopedics & have 11 years of service and I have conducted more than 200 medico legal examinations so far.

On 15.11.1993, I examined Jarnail Singh son of Mohinder Singh, 16 years Male, Jat Sikh, Student by occupation, resident of 195 Rattan Nagar Tripri Patiala incident at Phagan Majra, P.S.Sadar Patiala, brought by Ram Saran, date and time of examination 15.11.1993 at 8.45 p.m.

General condition:

Patient was conscious, B.P.100/70 MM Hg. Plus 80 per minute- Pupil bilateral normal.

Injuries

1. Incised wound on the front of chest on the left side 2 and ½ cm below left clavicle measuring 2.5 cm x 1.5 cm margins clean cut. Fresh bleeding was present. Probing not done. Advised surgeons opinion.

Nature of injury: After surgeons' opinion

Weapon used: Sharp

Probable duration within 6 hours.

I have brought the original medico legal register. Ex.P.B. is the correct carbon copy of the medico legal report of Jarnail Singh aforesaid. I have seen knife Ex.P.1. Injury no.1 could be the result of knife. Possibility cannot be ruled out that this injury could be self suffered. Ex.P.B/1 is the diagram showing the seat of the injury (pictorial diagram) Jarnail Singh accused is the same person, present today in the Court,

who was examined by me."

Manjit Singh PW6 was declared hostile.

On being cross-examined by the learned Addl.P.P., no material favourable to the prosecution case could be wrenched out in relation to his having witnessed the occurrence. Chanan Singh PW has been given up as having been won over by the accused. We are left with the solitary statement of Harjinder Kumar PW7 real brother of the deceased. The core question to be determined herein is as to whether the occurrence took place within his view. On evaluating, it transpires that his statement is not in consonance with the FIR. Examination-in-chief of Harjinder Kumar PW7 reads as under:-

> "Ram Tar deceased was one of my brothers who was younger to me. He was employed as a driver on a Maruti Van of Gurdev Singh, r/o V.Sular. The registration number of the Van in question was PB-01-353. On 15.11.93 I was on my way from village Tarain to Phagan Majra to call at Mohinder Singh s/o Kartar Singh of that village. At about 6.30 P.M. I reached the Bus stop of village Phagan Majra. There I met Manjit Singh Sarpanch & Chanan Singh, a member panchayat of V.Kasiana. The three of us started proceeding from the Bus Stop to village Phagan Majra. At the time we reached the place from where a katcha path takes off to village Kasiana. We found parked a Maruti Van with

head lights on with its windows lying open at a distance of about 1 ½ killa from the metalled road. On suspicion that it was the Van of my brother, we proceeded towards the Van. On reaching there we found my brother Ram Tar and the accused present in the Court, whose name I later on came to know as Jarnail Singh sitting on the back seat of the Van. Ram Tar my brother was sitting on the right side whereas the accused was found sitting on the his left side. Jarnail Singh accused was putting pressure on Ram Tar to take the Van by the katcha path way to village Kasiana, but he was not prepared. There was an exchange of hot words between them. Jarnail Singh dealt two stab blows with the knife which he was holding in his right hand and one of the blows landed on his chest and the other on his right flank. Ram Tar became unconscious and he rolled down on the ground through the right window of the Van. On seeing Ram Tar having died Jarnail Singh in order to commit suicide plunged the knife on the left side of his chest. The knife fell down from his grip in the Van. I and Chanan Singh made the two injured sit, while Manjit Singh Sarpanch went to arrange for a tractor. He brought the Tractor to the spot and the three of us put both Ram Tar and Jarnail Singh on the Tractor and rushed them to Rajindra Hospital,

Patiala. The van was left by us at the spot. On reaching the hospital we came to know from the Doctor about the death of Ram Tar. I and Manjit Singh Sarpanch then left for police station Sadar Patiala. At the time we reached the general Bus Stand Patiala we met ASI Karnail Singh and party at about 10.30 P.M. I made the statement before ASI Karnail Singh which however, was not read over to me. He obtained my signatures under my statement at point A on Ex.PD. (The statement has been exhibited only for the purpose of identification.) The party accompanied us to Rajindra Hospital Patiala and on reaching there ASI Karnail Singh prepared the inquest report which was attested by me and is Ex.PA/1. The ASI conducted the search of the dead body and from within the back pocket of the pant of the deceased he took out a wallet which was found to contain Rs.8/- in cash and a driving licence. A wrist watch was also removed from his left wrist and these articles were taken into possession by the ASI vide recovery memo Ex.PE which was attested by me. On 16.11.1993 ASI Karnail Singh and the police party went to the spot where the Maruti Van was lying. A blood stained knife which was found in the Van was seized by ASI Karnail Singh which was taken into possession without doing anything to the knife. There my

supplementary statement was recorded by the ASI."

"It is in his cross-examination that it is a fact that the statement which I made before the police at the bus stand was read over to me and I signed thereunder after admitting it to be correct." His such statement Ex.PD which became basis of the FIR, is inconsistent and incompatible with his statement in the Court. It is in his cross-examination that it is a fact that I did not state before the police that the accused plunged two stab blows on the person of my brother Ramtar and on having found him to be dead, he stabbed himself with the knife in his chest. I did not state before the police, that Ramtar, my brother first dealt a knife blow in the chest of Jarnail Singh accused and that Jarnail Singh accused wrested away his knife and dealt stab blow on the person of Ramtar. I did state before the police that I entertained a suspicion that the Van which was lying on the katcha path was that of my brother before we proceeded in that direction. When he was confronted with Ex.PD, it was not found so recorded therein. It is in his further examination that I did state before the police that Jarnail Singh was putting pressure on my brother to take the Van by the katcha path to village Kasiana. On being confronted with Ex.PD, it was not found so recorded therein. He further deposed that I did state before the police that a knife fell down in the Van from the grip of the accused. When confronted with Ex.PD, it was not found so recorded therein. Further, he states that in the statement, which I have made before the police at the spot I did state that the knife was taken into possession from within the Van. When he was confronted with his supplementary statement it was not found so recorded

therein. Under the stress of cross-examination, he has deposed that during night time, I did not disclose to the police about the attempted suicide by the accused. Had the accused made such an attempt within his sight, he might have disclosed it before the police. He has not disclosed as to in what connection he had gone to meet Mohinder Singh s/o Kartar Singh at village Phagan Majra in the night time. It was winter season. Even otherwise, after causing injuries to the deceased, there was no reason to commit suicide. Moreover, the story given out by Harjinder Kumar PW in the FIR gives such an impression as if the accused and the deceased were waiting for their (Harjinder Kumar and others) arrival before they had scuffle. Further, if the occurrence took place within their view, why did they remained mute spectators. Harjinder Kumar PW being the real brother of the deceased in the natural course might have intervened physically to save his brother. Mohinder Singh could have been produced at the trial to prove that Harjinder Kumar had to come to him in the night time. There is a Court question at the fag end of the cross-examination of this witness Harjinder Kumar in the following terms:-

> "Manjit Singh Sarpanch was himself driving the tractor on which the injured was brought to the police. Both the injured were made to sit on each one of the mudguard of the tractor and I kept holding Ramtar while Chanan Singh kept holding the accused while the tractor was being driven. "

As per Dr.O.P.Aggarwal's evidence, the time between injury and death was immediate and between death and postmortem was within 12 to 24 hours. It imports that Ramtar had succumbed to the injuries at the spot. This apart, the seat and dimension of injury no.1 are suggestive of the fact that the deceased would not have survived even for a short while after receipt of this injury. Thus, the evidence of Harjinder Kumar PW7 that the injured Ramtar was made to sit on the mudguard of the tractor and he kept holding him (Ramtar) is falsified. It is also in his cross-examination that the clothes which I was wearing and the clothes which Chanan Singh was wearing were smeared with blood. He has not apportioned any reason for not handing over the same to the police. As per his statement Ex.PD, which became basis of FIR, his brother Ramtar dealt knife blow on the left chest of Jarnail Singh accused, who after having snatched the same repeated two knife blows on the right chest of his brother. In the Court, he has testified that Jarnail Singh dealt two blows with the knife on the chest and right flank of his brother and on seeing that Ramtar has died, Jarnail Singh in order to commit suicide plunged the knife on the left side of his own chest. Thus, palpably he has given different versions. Manjit Singh Sarpanch PW6 did not **toe line with** , Harjinder Kumar PW in the Court. The diametrically divergent stories put forth by the latter (Harjinder Kumar, PW) wipes out his presence at the time of occurrence. The credibility of his testimony is corroded by improbabilities figuring therein. It is because of this reason that Manjit Singh PW deviated from his statement under Section 161 of Cr.P.C. and Chanan Singh PW was not examined. The distance between village

Train and Phagan Majra being 30 Kms as appears in the cross-examination of Harjinder Kumar PW, without any urgent work he could not be expected to go there. As noticed earlier, such urgency to meet Mohinder Singh has not been disclosed. It also seems to be a made up affair that Manjit Singh Sarpanch and Chanan Singh PWs met him at the Bus stand of Village Phagan Majra.

ASI Karnail Singh PW11 in his cross-examination has deposed that inquest report was completed at 8 AM and that uptil that time a version with us was that the deceased had given the stab wound to Jarnail Singh. The accused in his statutory statement has come up with the plea that he was learning driving from Ramtar deceased, who was his friend and that on the day of the occurrence three unidentified persons hired the Van of Ramtar and on reaching the spot Ramtar refused to take his Van on the katcha path and those persons picked up a row with him and they assaulted both of them with Gatra Kirpan and that both Ramtar and himself were given injuries each. One thing is clear from this plea that he has admitted the occurrence. So, the argument of Mr.Sangha that there is enough material to hold that the FIR came into existence on 16th November, 1993 at 9.00 AM or that the FIR would have reached the house of the Magistrate at 12.00 PM pales into insignificance. In his statutory statement, he has given his age as 19 years at the time of occurrence and that he was a student of 10th Class. If it is assumed that he was learning driving from the deceased, despite that it is unbelievable that he would have gone with the deceased at such an **odd**

hour. The sum and substance of the deposition of Balbir Singh PW8 is that "on 15th November, 1993 at about 5 PM Jarnail Singh accused came to hire my taxi. I could not start the engine of the taxi as the same developed some defect and he hired the taxi of Ramtar for Ludhiana. Ramtar and Jarnail Singh left in the taxi. Thereafter, Ramtar did not reach back the taxi stand." In his cross-examination, he has stated that his Maruti Van was 1988 Model and that I have not brought the Registration Certificate of taxi and that the same has was sold about 2 years ago. He was not asked to produce Registration Certificate. More so, the same might be in the possession of vendee. One thing is clear from his evidence that the vehicle in question was hired by the accused for going to Ludhiana. As follows from the testimony of Dr.Sukhcharan Singh PW2, one incised wound was found on the front of the chest on the left side of Jarnail Singh accused and that this injury could be result of the knife Ex.P1. According to Dr.O.P.Aggarwal (sic), injuries no.1 and 2 on the person of Ramtar also could be caused with knife **Ex.P1**. This evidence is a pointer towards the fact that the injuries on the deceased as well as the accused are the result of the same weapon. If some unidentified persons as alleged by the accused have caused these injuries, they would have not left the knife in the Van. The accused in his statutory statement has not disclosed as to for what reason the unidentified persons had caused injuries to both of them. It is not his plea that the alleged unidentified persons wanted to snatch the taxi or loot the cash from them. The argument of Mr. Sangha is that the deceased was the aggressor as firstly, he gave a blow to the accused and in reprisal, the latter gave two

blows to the deceased and, thus, it is a clear cut case of right of private defence. The question arises as to whether the right of private defence had accrued to the appellant and in its exercise, he could give two knife blows, though, only one knife blow was given to him by the deceased.

As ruled by the Apex Court in re: **Onkarnath Singh and others vs. The State of U.P.,** AIR 1974 Supreme Court 1550 " A right of private defence given by the Penal Code is essentially one of defence or self protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in S.99 which are as important as the right itself. One of them is that the harm inflicted in self defence must be no more than is legitimately necessary for the purpose of defence. Further, the right is co-terminous with the commencement and existence of a reasonable apprehension of danger to body from an attempt or a threat to commit the offence. It avails only against a danger, real, present and imminent."

Reverting back to the facts of the instant case, the moment the appellant snatched the knife from the deceased, the existence of apprehension of further assault ended up. After seizure of the knife, the deceased would have become apprehensive of being assaulted as he himself was rendered defenceless. The body built of the accused viz-a-viz the deceased might be more stronger due to which he wrested the knife even after receipt of knife blow injury. There is little doubt that a person facing with imminent threat of being assaulted is not expected to weigh in "golden

scales" the exact force required to repeal the danger. When the appellant grabbed the knife from the hands of the deceased, he got mentally relieved of fear of being further attacked. The danger, real, present and imminent became extinct. As per the above extracted observations from the case of **Onkarnath Singh and others (supra)**, one of the restriction indicated in Section 99 of the IPC is that the harm inflicted in self defence must be no more than is legitimately necessary for the purpose of defence. The appellant by giving repeated blows with knife on the right side of the chest, exceeded his right of self defence. The assault on the deceased was exceedingly vindictive and excessive. The force used was out of all proportion to the supposed danger, which no longer existed from the deceased. The appellant was not entitled to a right of private defence beyond the parameters laid down by Section 99 **ibid**. In the opinion of Dr. O.P. Aggarwal (sic), injury No.1 was sufficient to cause death in the ordinary course of nature. Both the injuries on the body of the deceased being on vital part with a sharp edged weapon, the offence falls within the ambit of Section 304(I) of IPC. The learned trial court has convicted and sentenced him under Section 304(II) of IPC. In the ultimate analysis, the impugned judgment warrants no interference except the modification to the extent that the offence on the given evidence falls under Section 304(I) of IPC. This incident is 14 years old. The certified copy of Identity Card/Certificate of Handicap dated 4th December, 2003, produced during arguments reveal that the appellant is right arm amputee and he is now permanently physically handicapped and the disability is 80%. So, taking

into consideration the entirety of facts and circumstances of the case, the sentence is reduced to 5 years rigorous imprisonment under Section 304(I) of IPC. Accordingly, this appeal is disposed off.

18th December, 2007 **(Harbans Lal)**
gsv **Judge**

Whether to be referred to the Reporter? Yes/No